

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

*Original &
proof of service*

75-1382

B 7cc

P/S

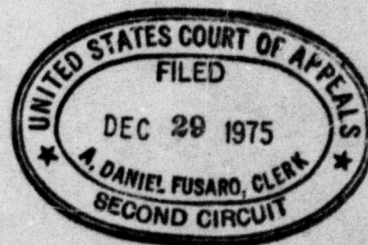
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA, :
Appellee, :
-against- :
THOMAS MARTIN AUSTIN, :
Appellant. :
-----X

Docket No. 75-1382

APPELLANT'S APPENDIX

JESSE BERMAN
Attorney for Appellant
351 Broadway
New York, New York 10013
[212] 431-4600



PAGINATION AS IN ORIGINAL COPY

75-138

TABLE OF CONTENTS

INDICTMENT	A
DOCKET SHEET	B
OPINION OF THE COURT	C
STIPULATION	D
DELINQUENCY REPORT	E

INDICTMENT

(72 Cr. 494)

2CR 494

MAY 4 1972

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

I N D I C T M E N T

-against-

THOMAS MARTIN AUSTIN,

Defendant.

Crim. No.
(Title 50 U.S.C. App.,
§462(a))

THE GRAND JURY CHARGES:

COUNT I

On or about and between the 13th day of August 1970, and the date of filing of this indictment, within the Eastern District of New York, the defendant, THOMAS MARTIN AUSTIN, a person registered pursuant to the Military Selective Act of 1967, as amended, the Proclamations of the President of the United States, and the Regulations issued and promulgated pursuant to said Act, knowingly failed and neglected to perform a duty required of him under and in the execution of said Act and Regulations, by knowingly refusing and failing to submit to induction into the Armed Forces of the United States, after notice had been given to the defendant by Local Board No. 64, exercising jurisdiction in that behalf, requiring the defendant to report for induction on the 13th day of August 1970. (Title to U.S.C. App., §462(a).)

COUNT II

On or about and between the 16th day of October 1969, and the date of filing of this indictment, within the Eastern District of New York, the defendant, THOMAS MARTIN AUSTIN, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Military Selective Service Act of 1967 (Title 50 U.S.C App., 451 et seq) and the

Rules, Regulations and Directives made pursuant thereto, in that he being a registrant to whom an order to report for an Armed Forces physical examination had been mailed by his Local Board No. 49, unlawfully and knowingly did fail, neglect and refuse to report for his Armed Forces physical examination on the 15th day of October 1969. (Title 50 U.S.C App., 8462(a); 32 CFR 1628.16.

COUNT III

On or about and between the 26th day of July 1969, and the date of filing of this indictment, within the Eastern District of New York, the defendant, THOMAS MARTIN AUSTIN, unlawfully and knowingly did fail, neglect and refuse to perform a duty required of him under and in execution of the Military Selective Service Act of 1967 (Title 50 U.S.C. App., 451 et seq) and the Rules, Regulations and Directives made pursuant thereto, in that he being a registrant was required to keep his local board advised at all times of the address where mail could reach him, unlawfully and knowingly did fail, neglect and refuse to keep his local board advised of same. (Title 50 U.S.C. App., 8462(a); 32 CFR 1641.3 and 1641.7.

A TRUE BILL

FOREMAN

ROBERT A. MORSE
United States Attorney
Eastern District of New York

DOCKET SHEET

THE ENDED PAGE

THOMAS MARTIN AUSTIN

co-counsel for deft. Jesse
German
351 Broadway, NYG. 10013—
431-4600

CLOSURE

Prof. Louis Lusk
c/o Col. - University of NY
New York, NY - 10027 -
435 West 116th St

~~Failed to register for selective service~~

DATE	PROCEEDINGS
4-4-72	Before Mishler, Ch J - Indictment filed
15-72	Before Zavatt, J - Case called - Deft not present - Bench Warrant Ordered.
5-23-72	Bench Warrant Issued
9-10-74	By WEINSTEIN J - Order filed appointing Prof. Louis Lusky to represent the deft and to appear on 9-20-74 @ 10:00 am.
13/74	Letter of 9/13/74 filed recd from Chambers to J. Weinstein from David Traer that the above Order is stayed pending the hearing; Louis Lusky will appear as friend of the Court. Clerk of the Court to inform the parties.
9-15-74	Letter to chambers from Michael E. Tigar dated 9-11-74 and 4 documents relating to matter filed. (Filed in 43456)

72 CR 494

DATE	DESCRIPTION
10/74	Before WEINSTEIN, J. - Case called - Deft not present - Govt's motion to set aside the court's order of 10/1/74 - Court holds that he has power to appoint counsel - Motion granted - Order filed by Mr. Lutsky to be set aside.
10/74	By WEINSTEIN, J. - Order filed that the Govt's motion to set aside the court's order of 10/1/74 is denied.
11/74	By WEINSTEIN, J. - Revised Memorandum and Order dated 9-30-74 filed, etc. in CR 43456
12/29/74	Memorandum of amicus curiae filed re: motion to dismiss for denial of speedy trial (Filed in CR43456)
1-1-74	Additional grounds for dismissal filed by deft.
1-1-74	Before WEINSTEIN J - case called for dismissal - deft not present - motion argued - decision reserved (see CR 43456)
1/74	Memorandum of Amicus Curiae re: Govt's motion to dismiss for denial of Nov. 1, 1974 filed (Filed in CR43456)
2-74	Inquiries to the atty for the Govt filed.
11-74	Amicus' suggestion of possible basis for dismissal filed.
-11-74	Affidavit of THOMAS R. MAHER filed.
-11-74	Memorandum of the U.S. filed.
-15-74	Reply Memorandum of defts on motion to dismiss filed.
-15-74	Copy of letter filed dated 11-14-74 from Chief Asst. U.S. Atty. Korman to Prof. Lutsky re inquiries.
1/20/74	Unsigned order of 11/18/74 submitted by Prof. Lutsky and letter of 11/20/74 from A.U.S.A. Korman to Judge Weinstein (re: order) filed
1/21/74	By WEINSTEIN, J. - ^{Memorandum and} Order filed that the U.S. should make available within 5 days the selective service file, etc.
11-26-74	BY WEINSTEIN J - Opinion filed denying defts motion to dismiss ordering Selective Service files turned over to defense counsel.
11-26-74	Govts stay granted of above order for 14 days.
11-27-74	Letter filed from defense counsel of Nov. 22, 1974 received from Chambers (re Martinez case 72 CR 810)
11-27-74	Stenographers transcript filed dated 11-1-74.
11-27-74	By WEINSTEIN J - Order filed in view of expressed intention by the US to seek review of this Court's prior orders by mandamus application is held in abeyance. Parties notified (page 3 of letter for copy of Order)
12/7/74	Letter from Michael Tigar dated 11/25/74 and accompanying letter from Hon. James L. Oakes filed
1/74	Letter from A.U.S.A. Korman to chambers dated 10/16/74 filed

CRIMINAL DOCKET 72 CR 494 U.S.A. VS. THOMAS MARTIN AUSTIN

DATE	PROCEEDINGS
12/6/74	Letter dated 12/3/74 filed from M. Tigar to Judge Weinstein with accompanying affidavit of Carmin R. Putrino
4-16-75	Letter filed dated 4-15-75 received from Chambers/ ^{from} RA Prof. Lusky, counsel for the deft.
8/4/75	Before BRANWELL, J.- Case called- Deft brought into court on bench warrant court read indictment to deft- court enters a plea of not guilty-bail fixed at \$2,000.00 P.R. Bond
8/4/75	Bench warrant retd and filed- executed
8/5/75	Petition for Rehearing of Order Denying Certiorari filed
8/6/75	75 N 1324 is inserted in CR file.
8-22-75	By WEINSTEIN J - Order filed that a pre trial conference shall be held on 9-19-75 at 9:30 am in courtroom #10. Defendant shall attend the conference.
8/25/75	Letter from A.U.S.A. Maher to chambers dated 8/20/75 filed.
9/19/75	Before WEINSTEIN, J.- Case called- Deft T. Austin and counsel present- Application by Mr. Lusky to be relieved of assignment is granted- John Berman is assigned as co-counsel-Oct. 10, 1975 for pre-trial conference and to set a trial date
9-24-75	By WEINSTEIN J - Order filed that Jesse Berman, Esq. be appointed as co-counsel for the deft, to serve as chief trial counsel and to receive all notices, etc. and further Ordered that the case is set down for pre trial conference at 9:30 am on Oct. 10, 1975 and the deft is ordered to appear personally at that time and place. (attys notified as directed by Judge Weinstein (see bottom of letter of 9-22-75))
10/1/75	By WEINSTEIN, J.- Order appointing counsel filed
10/10/75	Before WEINSTEIN, J.- Case called- Deft and counsel present- pretrial conference held and concluded-trial set for 10/23/75 at 10:00 A.M.
10/16/75	Copy of letter to A.U.S.A. Maher from Jesse Berman dated 10/4/75 filed
10-23-75	Before WEINSTEIN J - case called - deft & atty Jesse Berman present O Govts Trial Memo marked as Court Ex.#1 - Waiver of Jury trial signed- after deft was advised of his rights by the court - Indictment deemed amended by consent - Legal Aid by M.Seltzer assigned as counsel for Mary Austin - Govt & deft rest - defts motion to dismiss counts 1 and 2 is granted - So Ordered - Court renders a verdict of guilty as to count 3 - Findings of Fact and conclusions of law read into the record - trial concluded - sentence addid without date - bail continued.

DATE	PROCEEDINGS
10-23-75	Waiver of Jury Trial filed.
11/7/75	Before WEINSTEIN, J.- Case called- Deft and counsel present- imposition of sentence suspended and deft placed on probation pursuant to T-18, U.S.C. Sec. 5010(a) of the Y.C.A. under conditions stated orally on count 3- Clerk directed to file a notice of appeal in forma pauperis
11/7/75	Judgment and Order of Probation filed- certified copies to Probation
11/7/75	Notice of appeal without fee filed
11/7/75	Docket entries and duplicate of notice of appeal mailed to court of appeal
11/10/75	Voucher for compensation of counsel filed
11-12-75	Order received from the Court of Appeals that the Record on appeal be docketed on or before Nov. 25, 1975.
11-14-75	Affidavit of Thomas M. Maher filed
11-14-75	Letter dated Oct. 2, 1975 filed from Louis Lusky, Esq.
11-14-75	Letter dated April 15, 1975 filed from Louis Lusky, Esq.
11-14-75	Govts Trial Memorandum filed.
11-14-75	Notice of Appeal filed (without fee)

OPINION OF THE COURT

(from colloquy)

Trial Transcript, pp. 55-59, 64-70

MR. BERMAN:

With regard to Count Three, I have two or three arguments to make. I'm bad at guessing which of these two is the stronger and with the Court's permission I would like to make both before the Court rules.

The same delinquency report I just showed to the Court, in the large grid under "Identification of Delinquent," which is Item 1, there are three entries on the right-hand portion of that if I can just point, which I can take to read "Not available due to vandalism at Local Board."

It's the same language in each entry.

Apparently, from this file we can easily infer there was vandalism at Local Board 64 sometime prior to December 8th, 1970 which is the date of this Delinquency Report, Delinquent Registrant Report.

I think it's called SS Form 301. Normally, the file that comes to us at trial is the file and I have no objection to what is in the file. I don't think that anything in this file is not authentic or there's not a legal theory for this file coming in, but as to whether the Court, as trier of the fact, again, in this case can find beyond

1 a reasonable doubt that he failed to advise them of
2 an address when mail reached him under 1641.3. I
3 don't think the trier of fact can find that beyond
4 a reasonable doubt.

5 They may well have established through
6 Mrs. Austin, the address they had for him, that is
7 her home, was no longer a good address, but he might
8 well have advised the Board through several different
9 means which I will go through as to what his other
10 address is, what the current address or current
11 mailing address was.

12 Merely proving as they may well have done
13 in this case that the address at 115-46 144th Street
14 was not a good address, doesn't prove guilt beyond
15 a reasonable doubt if there is that possibility,
16 a reasonable possibility, your Honor ,

17 coming right out of the file, that he either
18 sent them a letter or telegram or made a phone call
19 or came in in person and informed them, from now
20 on that's not the place to reach me, reach me someplace
21 else.

22 There are some problems that come with that.
23 There's a cover sheet which I'm sure Mr. Maher will
24 argue. The cover sheet is what they call the front
25 of the file, actually; the actual outside of the folder

1 is called the cover sheet and a nomenclature.

2 There's a grid on the cover sheet for change
3 of addresses. There's no changed address entered
4 on the grid. I suppose if we had a witness here
5 testify that their normal procedure is to put
6 the change of address down there as quickly as
7 possible or once every week, but we don't have that
8 testimony here in this case.

9 In any event, if the mail reached the Board
10 that day, the day Mr. Austin might possibly, reasonably
11 have sent them a notice, of the new address, and was
12 vandalized before it was deposited in his file, then
13 it would not have opportunity to be entered on the
14 change of address.

15 I'm not coming in and saying to this Court
16 it's possible the Board was vandalized and therefore
17 all this argument flows.

18 The file says the Board was vandalized. That's
19 what gives us the reasonable doubt in the address.
20 There is a form that's used for reports of informa-
21 tion. Mr. Maher knows the number. When someone
22 calls or someone comes in person, to have the docu-
23 mentation in the file, the Board is under duty to
24 write the oral or visit information and put it on
25 that form.

The same thing there, they might go in a hopper and not be filed until the next morning. We don't know when the vandalism occurred. I've gone through this file over and over again.

I've been unable to ascertain when the vandalism occurred. It seems to me that the vandalism might have been in the nature of moving things around so the Board couldn't find some of its files for a while and I have a reason for that in the file.

One of the things the Board was unable to ascertain according to Delinquency Report, was the date of Mr. Austin's registration. That date appears right on the cover sheet. It would appear when they prepared the Delinquency Report on December 8th, 1970, they couldn't find and did not have in their possession the very cover sheet, the same cover sheet which would have the date of his registration is the place where they are supposed to enter the new change of address so this is not something speculative.

Again, the burden of proof is, of course, not on us and from the very file we have this problem about the possibility that he advised them of a change of address and that that was never put in his file and duly recorded because of the vandalism.

That's one of my arguments.

THE COURT: Let me dispose of it. I don't think anything of it, with all due respect.

The testimony of the mother and the file indicates this young man was living with the mother up until the time he left high school in either 1969 or 1970 and I am not going to assume the records were so confused that he did not include a change of residence if it were actually brought to the attention of the Board.

The fact that the Board continued to send these letters to the same place indicates that it had its own records showing it as his then address.

MR. BERMAN: I'm not sure I made my argument clear. He may have sent in something and it may have been destroyed or misplaced.

THE COURT: You did make your argument clear. He may have sent in something and it may have been destroyed or misplaced.

MR. BERMAN: If destroyed, they would never get it.

THE COURT: I don't think there's sufficient evidence of that to warrant that inference.

I'm not going to draw it.

MR. BERMAN: Very well.

21

22

23

24

25

MR. BERMAN: My last ground and I would hope this is my strongest, is that the intent that is ^{re} ~~re~~quired here in not providing the Board with the address where mail can reach you and that there must be proof of intent, it must be attempt to try to

1 make it hard for the Local Board to reach you.

2 Before you react to this too quickly --

3 THE COURT: Do you have any cases?

4 MR. BERMAN: I would like to hand the Court
5 United States v. Neilson, in the Ninth Circuit,
6 1973.

7 I'm sorry, I don't have the official citation.
8 I'm willing to share -- the relevant portion is the
9 second page beginning, I guess, with paragraph that
10 starts: "The Ninth Circuit ..."

11 They appear on the copy I'm giving Mr. Maher.
12 I would like to point to the part of the testimony
13 that I think relates to this directly.

14 "If someone leaves home because of having
15 not paid rent, evicted and for a period of time
16 Selective Service is unable to find them, and their
17 sole motive in leaving home was they were booted
18 out, I think the Court would agree they didn't,
19 intentionally didn't try to interfere with Selective
20 Service trying to get mail to them."

21 Here, Mrs. Austin testified, certainly
22 emotionally but quite believably, he left home with
23 a misunderstanding with his mother.

24 I think it's quite obvious that that's what
25 happened here. I think the small number of times

that he spoke to his mother, as she explained, there was a difference of opinion, it was her home. He was not of an age that he could have his own home, perhaps; his mother lived there with his other brothers and sisters.

It wasn't a question of either he'll move or that I will move. If there's a misunderstanding, he has to move out.

Under the Neilson case, under any sense of, in my opinion, establishing criminal responsibility, that this is akin to mistake or inadvertence or perhaps even neglect on his part.

Again, he at that time was either a high school student in his last year or maybe a year past that. Up to that point the record shows he registered with the Board. He arranged to have the school send a certification to the Board that he was in school at the time.

He did everything he had to do, everything the Board asked him to do until he had this terrible misunderstanding with his mother, from the testimony, and left home for that reason.

Without dwelling on the emotional issue of this too much, I think it's obvious that's what was primary in his mind in not staying at home, only

coming by from time to time.

In the meanwhile, we have the testimony that his mother sent back some mail and perhaps threw out some mail, but I don't think it can be said, again as prior fact, I don't think the Court can find beyond a reasonable doubt that his intent was to interfere with the administration of the Selective Service system as to him, as opposed to his intent being something totally different, getting away from the problem of his mother and again, neglect or mistake or stupidity, if you want to call it that or naivete are not the type of things that give rise to criminal intent that should result in a criminal conviction in this case.

THE COURT: I don't agree with you. I think that's what the law probably should be, but I don't think it is the law.

The defendant had a duty to keep the Selective Service Board advised of a place where mail would reach him. He knowingly failed to fulfill that duty.

MR. BERMAN: I neglected to mention something, if the Court will indulge me for a minute?

I didn't point out again the stipulation which is that the Government has no evidence that he ever used a phony name, phony identification, phony

papers or did anything that would demonstrate the intent to avoid connection with Selective Service.

I forgot to mention the stipulation. I would ask the Court to consider that as well.

THE COURT: I have considered it. The failure might result from mistake, accident or some other innocent reason if, for example, he mailed a notice to the Board of a change of address but failed to put sufficient postage on it and under present regulations the post office never forwarded the mail.

That would be an attempt, failure due to neglect or innocent mistake or he might have told somebody else to do it and that person might have said that they did it or he might have thought that the mail at his home would be forwarded to him but he might have had some enemy or some person who destroyed the mail rather than forward it or to protect him or in order to harm him.

Each one of those cases he would have thought that he had fulfilled his duty but he would not have fulfilled his duty because of neglect or innocence. That's not the nature of the obligation here. The obligation is affirmatively to give notice to the Board and he failed to do that.

It doesn't make any difference what his motive

1 is, which is what you're addressing yourself to.

2 MR. BERMAN: Not specifically -- not speci-
3 fically his motive but whether he had intent to
4 get out of touch with Selective Service.

5 That's the point I'm making.

6 THE COURT: He must have an intent to get
7 in touch with Selective Service. There is an
8 affirmative duty on him. I don't read this case
9 as going as far as you suggest.

10 There's nothing in the record to suggest that
11 this defendant had any thought whatsoever of
12 Selective Service and I agree with you and I so find.
13 His failure did not result so far as the record shows
14 from any deliberate intent on his part to disrupt
15 Selective Service or to keep Selective Service from
16 being in touch with him, but he failed to give notice.

17 He knew he had the obligation to give notice
18 and his failure did not result from any inadvertence.

19 MR. MAHER: I wonder if may mention at this
20 point, your Honor, that back in 1970, there was the
21 drawing of the lottery which was well publicized,
22 the first lottery.

23 The defendant received a lottery number in
24 1970. What I'm trying to indicate his duties of
25 Selective Service were very well in everybody's mind

not only because of problems in Southeast Asia, but all the other happenings in the area.

THE COURT: I find the duty was brought home to him, clear, given a card which told him what the duty was and all the papers indicated he was aware of that duty.

MR. BERMAN: On that point of the lottery, I don't think there's any proof that he ever received notice of a lottery number.

MR. MAHER: Published in the papers.

THE COURT: I find beyond a reasonable doubt that the defendant was made aware of the fact that he had a duty to keep Selective Service Board advised of the place where he would receive mail.

He may ultimately have forgotten about that duty but I don't think that has any impact here.

Do you want to submit written findings or will my findings suffice?

MR. BERMAN: For my purposes they would suffice.

THE COURT: The Government --

MR. MAHER: Suffice for our purpose, your Honor.

THE COURT: I find the defendant guilty on Count Three.


STIPULATION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
-against- : STIPULATION
THOMAS MARTIN AUSTIN, : 72 Cr. 494
Defendant. :
-----X

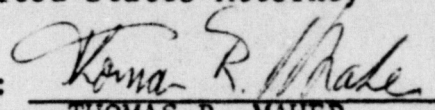
IT IS HEREBY STIPULATED AND AGREED, by and between the parties hereto, that if the F.B.I. agent in charge of this case were called, he would testify that the government has no evidence that the defendant has ever used any name other than THOMAS MARTIN AUSTIN, or that he has used any false Social Security number or any other false identifying documents.

Dated: Brooklyn, New York
October 23, 1975

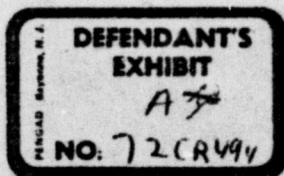


JESSE BERMAN
Attorney for Defendant

DAVID G. TRAGER
United States Attorney

By: 

THOMAS R. MAHER
Assistant U.S. Attorney



DELINQUENCY REPORT

SELECTIVE SERVICE SYSTEM DELINQUENT REGISTRANT REPORT

Approval
not required

Selective Service System
LOCAL BOARD NO. 544
155-53 Jamaica Avenue
11432



DEC 6 1970

(Date)

TO: Hon. Edward R. Weeber, United States Attorney.
Eastern District of New York, United States District Court House, Brooklyn, N.Y. 11201
(Address)

1. IDENTIFICATION OF DELINQUENT:

Full name of delinquent:				NONE	
AUSTIN	THOMAS	MARTIN		(Last) (First) (Middle) (Alias, if any)	
Last known address:					Last known telephone no.:
115-46 114th Street, Jamaica Queens New York 11436					529-0181
(Number and street or R. F. D. route) (City, town, or village) (County) (State) (Zip Code)					
Selective Service No.:		Social Security No.:		Selective Service classification:	
50 64 49 1874		131 42 7681		1-A	
Color of eyes:	Color of hair:	Height:	Weight:	Other obvious physical characteristics:	
Brown	Brown	6' 1"	165	N/A due to vandalism at L.B.	
Date of birth:		Place of birth:		Date of registration:	
November 8, 1949		Bronx, New York		N/A due to vandalism at L.B.	
Prior military service:				Place of registration:	
NONE				N/A due to vandalism at L.B.	
(Armed Force)		(Service number)		(Date of entry)	
(Name of last organization)				(Date of separation)	
This delinquent has a court record as follows: NONE					
Offense	Date of Conviction (Month, day, year)	Court (Name and location)		Sentence	

2. OFFENSES:

This delinquent violated an order of this Local Board (check applicable box)

- ☒ Order to Report for Induction (SSS Form 252).
☐ Order for Transferred Man to Report for Induction (SSS Form 253).

He committed this violation by (check applicable box)

- ☒ Failing to report for induction.
☐ Reporting for induction but failing or refusing to submit to induction into the Armed Forces at the
 Armed Forces Examining and Entrance Station located at _____

(Address)

The order indicated was mailed on July 16, 1970 to this delinquent at
 (Date of mailing)
115-46 114th Street, Jamaica, New York 11436 to report on August 13, 1970
 (Address) (Date)

In addition to failing to report for induction into the Armed Forces this delinquent has also failed to perform the following duties at the times indicated:

DUTIES

DATES

Failed to report for Pre Induction

June 29, 1970

2. EFFORTS MADE TO LOCATE DELINQUENT:

The delinquent has (Has, has not) been located on August 13, 1970 (Date) at 115-46 144th St., Jamaica, (Address) N.Y. (State)

The person who will always know the delinquent's address is Mrs. Emily Chapman (Name)
123-24 Irwin Place, Jamaica, New York (Address). This person has (Has, has not) been contacted by
letter (Letter, telephone, in person) on August 27, 1970 (Date) with the following result "same address"

The delinquent's last known place of employment or business is Mr. Irving Jones (Name)
514 West 126th St., New York, N.Y. (Address) (Telephone number). His employer has not (Has, has not) been contacted by
letter (Letter, telephone, in person) on Sept. 26, 1970 (Date) with the following result _____

4. Mail directed to the delinquent is (Is, is not) returned by the post office.

5. REMARKS: (Include additional efforts to locate delinquent or names of individuals who may know whereabouts of the delinquent.)

Induction Notice has not been returned by Post Office

Address at time of Registration - 115-46 144th Street, Jamaica, N.Y. 11435

Letter mailed to Mr. Irving Jones (PAKA) on Sept. 26, 1970 resulted with no reply

Tried to telephone home of registrant (Tel: 529-0484) - no answer - 12/8/70

6. FUTURE INFORMATION:

You will be advised promptly by letter of any change in this delinquent's status and of any additional facts which may come to the attention of this board concerning his whereabouts or which may aid you in apprehending and prosecuting him.

[Signature]
(Member, Executive Secretary or Clerk of Local Board)

This form shall be used to report to the United States Attorney those delinquents who fail to report for induction or who fail or refuse to submit to induction. Other delinquencies, if reported to the United States Attorney, shall be reported by letter.

This form shall be made out in quadruplicate. The original and two copies are forwarded to the State Director of Selective Service, who shall transmit the original and one copy to the United States Attorney for the judicial district in which the local board is located and retain one copy. One copy of the form shall be filed in the Cover Sheet (SSS Form 101) of the delinquent.


E-2

AFFIDAVIT OF SERVICE BY MAIL

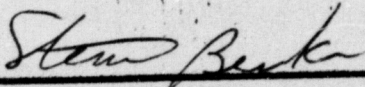
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JESSE BERMAN, being duly sworn, deposes and says:

That on the 24th day of December, 1975, I served the
within Appellant's Appendix
upon David Trager, U.S. Attorney (E.D.N.Y), attorney for
appellee in this action, at
225 Cadman Plaza East, Brooklyn, New York 11201
the address designated by said attorney for that purpose, by
depositing a true copy of same, enclosed in a postpaid properly
addressed wrapper, in an official depository under the exclusive
care and custody of the United States Postal Service within the
State of New York.


JESSE BERMAN

Sworn to before me this
24th day of December, 1975.



STEVEN BERNSTEIN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4520522
Qualified in New York County
Term Expires March 30, 1976